

DISASTER PREPAREDNESS

Considerations for Heir Property Owners

How Do I Hold Title?

Holding title to property means having rights of use and ownership. Title can be held by one owner or multiple owners and is usually documented by a deed recorded with the Register of Deeds in the county in which the property is located.

What is Heir Property?

Heir property is real property passed from one generation to the next when a deceased landowner either (1) Dies "intestate," or without a will; or (2) Dies with a will that devises property to multiple people.

What is Intestacy?

When someone dies "intestate," their property passes according to a statutory formula that determines distribution. This method of distribution is called intestate succession. When real property is distributed in this way, the heirs who receive a portion are referred to as tenants in common.



Since the fall of 2018, North Carolina has experienced four major storms -- Hurricane Florence (September 2018), Tropical Storm Michael (October 2018), Hurricane Dorian (September 2019), and Hurricane Isaias (August 2020). In the aftermath of these hurricanes, floods and natural disasters, some North Carolina homeowners and landowners who own heir property encountered an unexpected obstacle to receiving emergency disaster assistance: the requirement that they prove legal ownership of, or title to, their land.

This fact sheet explains the following issues you may wish to consider, among others, before a storm strikes: (1) What it means to hold title to property and the different rights landowners can have in real property; (2) What heir property is and how to identify heir property owners; (3) How to consolidate title to prove ownership or occupancy to qualify for federal disaster assistance; and (4) What some of the basic requirements associated with federal disaster relief programs are.

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I'm an Heir Owner. Where Can I Start?

- ◆ Create a family tree beginning with the original owner of the property. Include all family members and spouses, and dates of death, marriage, and divorce.
- ◆ Obtain the current contact information for your family members.
- ◆ Work with an attorney to conduct a title search and to get advice on whether a legal vehicle may assist you with protecting and co-managing the property.



What Legal Vehicles Are Available to Me?

- ◆ Business Entity Formation
- ◆ Family Land Trust
- ◆ Tenancy-in-Common Agreement

What is a Tenancy in Common?

A tenancy in common is a form of collective ownership through which family members may co-own property. Each co-owner is permitted to possess the entire property; to receive rental or other income; and to request a sale of the property. Each co-owner also shares in the responsibilities, which include the payment of property taxes. It is the least effective ownership type for families who want to consolidate title because each tenant in common is permitted to pass their interest to whomever they choose, which creates an even larger pool of co-owners with each passing generation. When property passes in this manner, the number of co-owners can become so large and the size and value of the land can become so small as to render it unusable.

Legal Tools to Consolidate Title and Qualify for Assistance

Heir property owners usually do not have a deed to evidence their ownership interest in the property, making it harder to know and prove who has title to the property and to qualify for disaster relief assistance. Fortunately, there are legal tools that can help show clear title to the property, consolidate ownership, and streamline management of the property. Heir property owners are encouraged to explore the legal tools below with an attorney prior to a disaster.

Business Entity Formation

Forming a business entity helps centralize the ownership and decision making for the property. Since the business entity holds title to the property, it can apply for disaster relief. An entity, such as a limited liability company (LLC) or corporation, can be created through filings with the North Carolina Secretary of State. After creation, the heirs would convey their interest in the property to the business entity. Each heir would then be awarded a membership interest or share, depending on the entity, in the property. Corporate bylaws or an operating agreement would be created to determine the internal rules and procedures for the entity. A legal document that clearly states the owner of the property, who can live in the home, and who is responsible for payment of property taxes could help an heir property qualify for various disaster assistance programs.

Family Land Trust

A trust is a legal entity that holds assets, such as property, for the benefit of certain individuals. Heir property owners can deed their interest to the trust and name one person to serve as the trustee. The property owners would be the beneficiaries of the trust, and the trust would hold title to the land. The trustee would manage and control the land for the benefit of the beneficiaries and in accordance with the trust agreement, which should address common issues with ownership, such as how the land should be maintained and how the profits should be split among the beneficiaries. Since the trustee(s) has/have title to the property they would be able to apply for disaster assistance if the property is damaged after a disaster.

Tenancy-in-Common Agreement

A tenancy-in-common agreement details the rights and responsibilities for all property owners. The agreement can address common concerns such as the percentage ownership interest for each heir; who will manage the property; who will pay for disaster insurance and property taxes; how the property will be used; and what happens if an owner wishes to sell their interest in the property. A tenancy-in-common agreement can be a good option for managing heir property when all or a majority of the owners are identified and are in agreement on how to use and manage the land. In addition, having such an agreement can help heir property owners qualify for a farm number and be eligible for disaster assistance through the USDA.

Land Loss Prevention Project

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DISASTER RELIEF PROGRAMS

FEMA (Federal Emergency Management Agency): Financial assistance or direct services to owner-occupied homes. This means that the home must be occupied by (1) the owner; (2) a person without formal title who is responsible for the taxes and/or maintenance; or (3) a person with lifetime occupancy rights.

EVIDENCE? Deeds, property tax bills, utility bills.

SBA (Small Business Administration): Low-interest loans for applicants who require repairs or replacements after a natural disaster. The SBA requires that the property be the owner's (or occupant's) "primary residence."

EVIDENCE? Deeds, tax records.

USDA (US Department of Agriculture): Loans and other funding to farmers and ranchers through the Farm Service Agency (FSA) and its associated agencies. These programs may require a farm number and for the owner to be the operator of the property. The 2018 Farm Bill introduced provisions for farm operators on heir property to obtain a farm number and greater access to USDA programming.

EVIDENCE? Tenancy-in-common agreement, tax returns of the Farm Operator for the five preceding years, self-certification of control of the land.